

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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BELINDA WHEELER,

Plaintiff,

-against-

22 CIVIL 2264 (LGS)

JUDGMENT

THE TOPPS COMPANY, INC.,

Defendant.

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It is hereby **ORDERED, ADJUDGED AND DECREED:** That for the reasons stated in the Court's Opinion and Order dated January 25, 2023, under Federal Rule of Civil Procedure 15(a), a court "should freely give leave" to amend a pleading "when justice so requires," but leave to amend is properly denied if to do so would be futile. In response to the original complaint, Defendant filed a pre-motion letter describing the legal arguments, supported by case law, as to why the GBL, breach of warranty, fraud and unjust enrichment claims should be dismissed. Those arguments included that the GBL claims lack a New York nexus, that the breach of warranty claims were not preceded by pre-suit notice, that the MMWA claim falls with the state law breach of warranty claims, that the fraud claim fails to plead the requisite intent, and that the unjust enrichment claim is duplicative. In response to Defendant's letter, Plaintiff chose to file an amended complaint, the FAC. Despite being on notice from Defendant's letter, the FAC did not correct the deficiencies, which are the same reasons that the FAC is now dismissed. The Court accordingly finds that any amendment would be futile and has GRANTED Defendant's motion to dismiss with prejudice; accordingly, the case is closed.

Dated: New York, New York

January 25, 2023

RUBY J. KRAJICK

Clerk of Court

BY:

K. mango

Deputy Clerk